

HOUSE No. 1084

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to shared responsibility in health reform.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert J. Nyman	5th Plymouth
Martin J. Walsh	13th Suffolk
Peter v. Kocot	1st Hampshire
Mary E. Grant	6th Essex
Denise Provost	27th Middlesex
John W. Scibak	2nd Hampshire
Michael Brady	9th Plymouth
Ellen Story	3rd Hampshire
Carl M. Sciortino, Jr.	34th Middlesex
Matthew C. Patrick	3rd Barnstable
Bill Bowles	2nd Bristol
Angelo J. Puppolo, Jr.	12th Hampden
Willie Mae Allen	6th Suffolk
Christine E. Canavan	10th Plymouth
Frank I. Smizik	15th Norfolk
Kay Khan	11th Middlesex
Steven J. D'Amico	4th Bristol
Tom Sannicandro	7th Middlesex
James J. O'Day	14th Worcester District

Thomas J. Calter	12th Plymouth
James B. Eldridge	Middlesex and Worcester
Patricia D. Jehlen	Second Middlesex
Mark V. Falzone	9th Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO SHARED RESPONSIBILITY IN HEALTH REFORM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The secretary of administration and finance and the secretary of health and human
2 services shall implement a health reform employer responsibility revenue program pursuant to this act.
3 The program shall be designed to increase revenue available to fund health programs authorized by
4 chapter 58 of the acts of 2006.

5 In implementing the program, the secretary of administration and finance and the secretary of
6 health and human services shall implement an option authorized by sections 2, 3, 4 or 5 of this act, or a
7 combination of such options.

8 SECTION 2. (a) The secretary of administration and finance and the secretary of health and
9 human services may implement the provisions of this section pursuant to section 1 of this act.

10 (b) As used in this section, the following words, unless the context clearly requires otherwise,
11 shall have the following meanings:—

12 “Benefiting employee”, an employee who is enrolled in the Commonwealth Care Health
13 Insurance Program established pursuant to chapter 118H of the General Laws.

14 “Benefiting employer”, an employer that employs a benefiting employee.

15 Words used in this section that are defined in subsection (a) of section 188 of chapter 149 of the
16 General Laws shall have the meaning ascribed to them by that subsection.

17 (c) The division of health care finance and policy and the department of workforce development
18 shall assess benefiting employers a health benefit compensation payment for each benefiting employee
19 enrolled in the Commonwealth Care Health Insurance Program, subject to the provisions of this section
20 and regulations promulgated by the division. Health benefit compensation payments shall be made
21 quarterly based on enrollment of employees in the Commonwealth Care Health Insurance Program during
22 the quarter. Revenue received under this section shall be credited to the Commonwealth Care Trust Fund
23 established pursuant to section 2000 of chapter 29 of the General Laws.

24 (d) The commissioner shall determine the amount of the payment each year. The amount shall be
25 no more than half of the Commonwealth's share of the average per-member cost of the Commonwealth
26 Care Health Insurance Program net of average federal reimbursements.

27 (e) The commissioner shall determine which benefiting employers shall be subject to the
28 payment. The commissioner may exempt employers who employ less than a minimum number of
29 employees set by the commissioner. The commissioner may exempt employers who employ less than a
30 minimum number of benefiting employees set by the commissioner. No employer who employs 10 or
31 fewer full-time equivalent employees shall be subject to the payment. The commissioner may pro-rate
32 the payment required with respect to benefiting employees who work less than 500 hours during a
33 quarter.

34 (f) The commissioner shall establish a hardship exemption process that exempts benefiting
35 employers from the payment due to financial hardship. The commissioner shall establish by regulation
36 criteria for a hardship exemption.

37 (g) Benefiting employers subject to the health benefit compensation payment shall receive a
38 credit against the amount due under this section for any fair share employer contributions paid pursuant to
39 section 188 of chapter 149 of the General Laws.

40 (h) The Commonwealth Health Insurance Connector Authority, the department of revenue and
41 the office of medicaid shall assist the division and the department of workforce development with the
42 administration of this section. The department of revenue shall share information required to administer
43 this subsection with the division of health care finance and policy.

44 (i) The director of unemployment assistance shall collect the payment required under this section
45 and shall implement penalties for employers who fail to make payments as required by this section. In
46 order to reduce the administrative costs of collection of contributions, the director shall, to the extent
47 possible, use any existing procedures that have been implemented by the division of unemployment
48 assistance to collect contributions under section 188 of chapter 149 of the General Laws.

49 (j) No employer shall discriminate against any employee or applicant for employment on the
50 basis of the employee's eligibility for or enrollment in the Commonwealth Care Health Insurance
51 Program, or any facts or circumstances relating to a health benefit compensation payment assessed
52 against the employer in relation to the employee. Violation of this subsection shall constitute a per se
53 violation of chapter 93A of the General Laws and shall constitute an unlawful practice under section 4 of
54 chapter 151B of the General Laws.

55 SECTION 3. (a) The secretary of administration and finance and the secretary of health and
56 human services may implement the provisions of this section pursuant to section 1 of this act

57 (b) Notwithstanding the provisions of subsection (c) of section 188 of chapter 149 of the General
58 Laws, the annual fair share employer contribution established in said section 188 shall be increased to
59 take into account the cost to the commonwealth of covering employees of non-contributing employers in
60 the most recent fiscal year on whose behalf health care services were reimbursed in whole or in part by
61 the Commonwealth Care Health Insurance Program. Notwithstanding the \$295 per employee limit of

clause (10) of said subsection (c), the commissioner of health care finance and policy shall annually determine the increased annual fair share employer contribution pursuant to this subsection.

SECTION 4. (a) The secretary of administration and finance and the secretary of health and human services may implement the provisions of this section pursuant to section 1 of this act.

(b) As used in this section, the following words, unless the context clearly requires otherwise, shall have the following meanings:—

“Covered employee”, an employee as defined in section of chapter 151A of the General Laws of a covered employer, provided that the division of health care finance and policy shall further define covered employee for purposes of this section, which may include, but not be limited to, specifying a minimum number of hours worked, a minimum length of employment, a maximum salary, and the exclusion of those with access to federal or other health programs or health coverage.

“Covered employer”, an employing unit as defined in section 1 of chapter 151A of the General Laws that employs 11 or more full-time equivalent employees in the commonwealth, provided that the division of health care finance and policy shall further define covered employer for purposes of this section.

“Health care expenditure”, any amount paid by a covered employer to its covered employees or to a third party on behalf of its covered employees for the purpose of providing health care services for covered employees or reimbursing the cost of such services for its covered employees, including, but not limited to (1) reimbursement by such covered employer to its covered employees for expenses incurred in the purchase of health care services; (2) payments by a covered employer to a third party for the purpose of providing health care services for covered employees; (3) costs incurred by a covered employer in the direct delivery of health care services to its covered employees; and (4) payments by a covered employer to the commonwealth pursuant to section 188 of chapter 149 of the General Laws, and (5) payments by a covered employer to the commonwealth, which shall be credited to the Commonwealth Care Trust Fund established pursuant to section 2000 of chapter 29 of the General Laws. Notwithstanding any other provision of this section, “health care expenditure” shall not include any payment made directly or indirectly for workers’ compensation or Medicare benefits.

“Health care expenditure rate”, the amount of health care expenditure that a covered employer shall be required to make for each hour paid for each of its covered employees each quarter, as determined by regulation by the division of health care finance and policy. In setting the health care expenditure rate, the division may establish different rates for covered employers with different amounts of employees.

“Required health care expenditure”, the total health care expenditure that a covered employer is required to make every quarter for all its covered employees.

(c) Covered employers shall make required health care expenditures to or on behalf of their covered employees each quarter pursuant to this subsection. The division of health care finance and policy and the department of workforce development shall promulgate regulations to implement the provisions of this subsection.

(d) The required health care expenditure for a covered employer shall be calculated by multiplying the total number of hours paid for each of its covered employees during the quarter by the applicable health care expenditure rate. In determining whether a covered employer has made its required health care expenditures, payments to or on behalf of a covered employee shall not be considered if they exceed the number of hours paid for the covered employee during the quarter multiplied by the applicable health care expenditure rate.

(e) The division of health care finance and policy shall establish a hardship exemption process that exempts covered employers from the required health care expenditure due to financial hardship. The commissioner shall establish by regulation criteria for a hardship exemption.

(f) The director of unemployment assistance shall collect any payments made to the commonwealth under this section. The director shall determine penalties for late payment and failure to pay any required health care expenditure, reporting forms and procedures, and other matters as the director may determine. In order to reduce the administrative costs of collection of contributions, the director shall, to the extent possible, use any existing procedures that have been implemented by the division of unemployment assistance to collect contributions under section 188 of chapter 149 of the General Laws.

SECTION 5. (a) The secretary of administration and finance and the secretary of health and human services may implement the provisions of this section pursuant to section 1 of this act.

(b) Each employer who employs more than 10 employees and is subject to the provisions of 14, 14A, or 14C of chapter 151A of the General Laws shall pay, in the same manner and at the same times as the director of workforce development prescribes for the contribution required by section 14, an employer responsibility contribution. For employers with fewer than 100 employees the contribution shall be computed by multiplying the wages paid its employees by the employer responsibility contribution rate of 5 per cent. For employers with 100 or more employees the contribution shall be computed by multiplying the wages paid its employees by the employer responsibility contribution rate of 7 per cent. The receipts from these contributions shall be paid to the director and shall be credited to the Commonwealth Care Trust Fund established pursuant to section 2000 of chapter 29 of the General Laws.

(c) For the purposes of this section, "wages" shall not include that part of remuneration which, after remuneration equal to the employer responsibility wage base with respect to employment with such employer has been paid to an individual during the calendar year, is paid to such individual during the year. For the purposes of this section, the employer responsibility wage base shall be equal to the maximum wage base as determined by 42 USC 430 for each year.

(d) Except where inconsistent with the provisions of this section, the terms and conditions of chapter 151A of the General Laws that apply to the payment of and the collection of contributions shall apply to the same extent to the payment of and the collection of the employer responsibility contributions required by this section; provided, however, said contributions shall be reduced by an amount equal to the employer's health care expenditures, provided that said contribution shall not be less than zero. For the purposes of this section, health care expenditures shall mean any amount paid by an employer to its employees or a dependent of an employee or to a third party on behalf of its employees or their dependents for the purpose of providing health care services for employees or their dependents or

140 reimbursing the cost of such services for its employees or their dependents, including, but not limited to
141 (1) reimbursement by such employer to its employees for expenses incurred in the purchase of health care
142 services; (2) payments by a employer to a third party for the purpose of providing health care services for
143 employees or their dependents; and (3) costs incurred by a employer in the direct delivery of health care
144 services to its employees or their dependents.

145 (e) The director, in consultation and cooperation with the commissioner of revenue, shall promulgate
146 regulations to enforce the provisions of this section. The regulations shall include reasonable exemptions,
147 including exemptions for substantial hardship, penalties for late payment and failure to pay, reporting
148 forms and procedures, and other matters as the director may determine.